BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the United States Board of Tax Appeals is reported in 39 B.T.A. 783 (R. 68-74).

The opinion of the Circuit Court of Appeals for the Second Circuit is reported at 111 F. (2d) 576 (R. 103-107).

Jurisdiction.

Jurisdiction to issue the Writ of Certiorari prayed for herein, is invoked under the provisions of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925; U.S.C.A. Title 28, Section 347.

The date of the Decree sought to be reviewed is May 15, 1940.

Statutes Involved.

The Statutes and House Committee Report involved, will be found in the Appendix, *infra.*

Statement of the Case.

A summary statement of the facts is found in the annexed Petition; and in the interests of brevity, the statement will not be repeated.

Specification of Errors.

1. The Circuit Court of Appeals erred in finding and holding that any part of the property transferred in trust

in 1929 was includible in the decedent's taxable estate pursuant to the provisions of Section 302(d) of the Revenue Act of 1926, as amended by Section 804 of the Revenue Act of 1932.

2. The Circuit Court of Appeals erred in finding and holding that said amendment, Section 804, had any application to the trust transfer made in 1929. The fact that the decedent died in 1935 after the enactment of Section 804 could not serve to bring said property back into the decedent's taxable estate, in view of the fact that it had been lawfully excluded therefrom under the provisions of Section 302(d) of the Revenue Act of 1926.

3. The Circuit Court of Appeals erred in finding and holding that the wife's discharge of the husband's obligation to support her, was a marital right in decedent's property or estate, within the meaning of said Section 804. The fact is that said obligation ceased upon his death.

4. The Circuit Court of Appeals erred in finding and holding that the husband granted the wife an annuity in consideration of the wife's release of her marital right of support, and to that extent the release was not a valid consideration under said Section 804. The fact is that the agreement for monthly payments was evidence of the husband's continuing obligation, and said trust transfer was made to compromise and discharge the husband's general obligation to support the wife and child, which obligation would continue only up to the time of his death.

5. The Circuit Court of Appeals erred in finding and holding that the wife's discharge of the marital right of support was in the nature of a property right, coming into existence at the time of the husband's death. The fact is

that the marital right of support was personal right which would cease at his death.

6. The Circuit Court of Appeals erred in failing to find and hold that if retroactively applied, Section 804 would violate the Fifth Amendment.

7. The Circuit Court of Appeals erred in failing to find and hold that the revocable trust transfer was non-testamentary in character and status and was taken out of the reach of the Federal Tax law under the provisions of Section 302(d) of the Revenue Act of 1926.

8. The Circuit Court of Appeals erred in failing to find and hold that said Section 804 violated the Fifth Amendment as applied to the facts and circumstances involved in the case at bar.

9. The Circuit Court of Appeals erred in failing to find and hold that Section 804 was intended by Congress to apply only to transfers, made subsequently to the enactment of said Section.

10. The Circuit Court of Appeals erred in reversing the Order of the Board of Tax Appeals and remanding the cause.

Summary of Argument.

Having been made in 1929 for an adequate and full consideration in money or money's worth, the revocable *inter vivos* trust transfer was excluded from the settlor's estate for all time, by the exception found in section 302(d) of the Revenue Act of 1926. If the amendment, enacted in 1932 as Section 804 of the Revenue Act of 1932, is retroactively applied to affect said transfer, it is in violation of the Fifth Amendment. An examination of Section 804 and

a study of the applicable rules of construction and of the House Committee Report indicates that Congress had no intention to give said Section retroactive effect.

As a matter of fact, the consideration for the trust transfer in 1929 was a discharge of the husband's continuing obligation to support his wife and child. This obligation would cease at his death. The wife's release of right of support (and of course, her assumption of the child's support) during the husband's life, was not a relinquishment by her of any dower or other marital rights in the decedent's property or estate, within the meaning of Section 804.

ARGUMENT.

Preliminary Statement.

The Circuit Court of Appeals recognized that the trust transfer was made for a consideration in money's worth within Section 302(d), to wit, (a) the discharge of the husband's continuing obligation to support his wife, and (b) her assumption of his continuing obligation to support the minor child. In other words, if the trust transfer was governed only by Section 302(d) of the Revenue Act of 1926, it was brought within the exception, contained in that Section. This exception excludes a revocable trust transfer from Estate Tax, provided it was made for an adequate and full consideration in money's worth.

However, the Circuit Court of Appeals went on to hold (R. 104) that, as to the part of the trust set up for consideration (a) above, the trust transfer lost its non-taxable status and was brought back within the reach of the Estate Tax law, by the amendment (restricting the nature of consideration), enacted in 1932 as Section 804 of the Revenue Act of 1932. Accordingly, this brief is devoted primarily

to said Section 804. (As to the part of the trust set up for consideration (b) above, the Circuit Court of Appeals held (R. 105) that it was non-taxable, and remanded the proceeding to the Board of Tax Appeals so that the amount of such exempt part might be computed. As to such part, set up in consideration of the wife's agreement to assume the support of the child, the Court held that there was an adequate and full consideration in money's worth which consideration was not a "release of any marital right"; and that therefore the trust transfer to this extent, was at all times within the exception or exclusion clause, found in Section 302(d).

Throughout this brief, George Tuttle Brokaw will be referred to as the husband or decedent; Ann Clare Brokaw will be referred to as the wife.

POINT I.

Section 302(d) of the Revenue Act of 1926 excluded the 1929 *inter vivos* trust transfer from the operation of the Estate Tax Law. If the Amendment, Section 804 of the Revenue Act of 1932 is retroactively applied to reach said transfer, it is arbitrary and oppressive and in violation of the Fifth Amendment of the Constitution.

The husband and wife entered into a binding contract in 1929, relying on the estate tax law, then in force. By this contract the parties adjusted their affairs and lawfully compromised and determined how much the husband should be obligated to contribute (either by monthly payments or by the establishment of a trust fund), and how much the wife should be entitled to receive for the support of herself and for her assumption of the child's support. *Galusha* v.

Galusha, 116 N. Y. 635, 643; *Winter* v. *Winter,* 191 N. Y. 462, 470.

The obligation to support them, resulting from the marriage relationship, would cease upon his death. After his death there would be no continuing obligation against his property or estate. *Wilson* v. *Hinman,* 182 N. Y. 408, 412; *Barnes* v. *Klug,* 129 App. Div. 192, 195; *Rice* v. *Andrews,* 127 Misc. 826.

By the Separation Agreement, the husband converted his continuing obligation into a promise either (a) to pay the wife a fixed sum per month during her lifetime, or (b) to establish a trust with income payable to her during her life. She released him from all liability to provide support and she assumed the support of the child (R. 43-56). On June 12, 1929, he set up the trust fund with income payable to the wife, which she accepted in full satisfaction and discharge of the husband's obligation (R. 31, 32). The husband and wife were free to reduce to a certainty, the amount of money which the husband would pay to discharge an obligation, which might cost him more or less than what he had agreed to pay. Thereafter there was no continuing obligation upon the husband nor did he guarantee any amount of income.

The parties estimated and fixed the monthly requirement of the wife and daughter at $2,500 (R. 92). On the normal expectancy of the wife's life and computed according to the tables of mortality, at the age of twenty-six years, the value of such monthly payments was the sum of $529,794.12 (R. 97). This was evidence of the "money's worth". The husband settled his outstanding obligation, using part of his property ($414,324.50) to do so. In place of a continuing monthly obligation or in place of the establishment of the trust fund, he might have paid to the wife a lump sum of money to discharge the obligation. *Green-*

field v. *Greenfield,* 161 App. Div. 573, 575; *Gewirtz* v. *Gewirtz,* 189 App. Div. 483; *Grissler* v. *Grissler,* 209 App. Div. 480; *Pye* v. *Pye,* 167 App. Div. 951. As a matter of fact, upon a mathematical computation, the establishment of the trust fund saved for him and his estate more than $100,000, to wit, the difference between the said sums of $414,324.50 and $529,794.12. Consideration is not confined to something coming in; compromising the amount of one's liability may be an adequate and full consideration. *Commissioner* v. *Kelly's Estate,* 84 F. (2d) 958, 964, Cert. denied 299 U. S. 603; *United States* v. *Mitchell,* 74 F. (2d) 571.

There was accordingly an adequate and full consideration in money or money's worth for the trust transfer. Section 302(d) provided that (notwithstanding the power of revocation) where the trust transfer was made for such consideration, the property was no longer includible in the settlor's estate. Section 804 of the Revenue Act of 1932 provided that relinquishment of dower and other rights should not be considered to any extent, a consideration in money or money's worth. The Circuit Court held that this amendment in 1932 had such effect, as to bring part of the trust fund back into the decedent's taxable estate.

Section 804 was a restrictive amendment, limiting the character of "consideration" for tax purposes. It would be an arbitrary and oppressive act and a violation of the Fifth Amendment, to apply such 1932 amendment to a transfer, made and executed in 1929. Although it was a revocable transfer, which must necessarily result in a shifting of economic benefits at the transferor's death, nevertheless, under the existing law in 1929, such a transfer upon an adequate and full consideration was regarded as a completed transfer and was not deemed to be testamentary in character; and such property had a status, entirely without the scope of the Estate Tax law. In the case of *Helver-*

ing v. *City Bank Co.*, 296 U. S. 85, 92, it was held that by the enactment of Section 302(d), Congress had created a "fictitious status" so that the establishment of a revocable trust should be deemed "testamentary in character", but added that there are "limits to the power of Congress to create a fictitious status". We submit that when the revocable transfer was made for an adequate and full consideration in money or money's worth, then there could be no fear of estate tax "evasion" and the property so transferred was for all time taken out of the reach of the taxing statute. By the exception found in Section 302(d), Congress expressly recognized that such a revocable transfer, based upon an adequate and full consideration in money's worth, was not "testamentary in character".

Congress recognized this same principle in Section 811(i) of the Internal Revenue Code (formerly Section 302(i) of the 1926 Act), which provides that where transfers, etc. (which are to be included in gross estate) were made for a consideration in money or money's worth, then only the excess of the fair market value over the value of the consideration, is to be included in the gross estate. If there is no "excess", then there is no gross estate. The same principle is recognized in Section 811(e) of the Code.

The Circuit Court of Appeals in its decision held that the husband had no "assurance when he set up the trust, that it would not be included in his gross estate" (R. 105). We urge that in 1929 when he set up the trust, as a result of a binding contract, he had every possible assurance that the property was no longer part of his taxable estate. Congress in 1926 had specifically excluded property, so transferred by revocable trust agreement. The effect of the transfer, resting upon an adequate and full consideration, was to take the property out of the decedent's gross estate, as in the case of a gift.

In the case of *Blodgett* v. *Holden*, 275 U. S. 142, it was held to be wholly unreasonable that one who in entire good faith and without the slightest premonition of such consequences disposes of his property by gift, should thereafter be required to pay a tax for so doing. The case of *Welch* v. *Henry*, 305 U. S. 134, 147, 148 is to the same effect.

The Circuit Court of Appeals held (R. 104) that Section 804 was a "definitory amendment" and that Section 302(d) as so amended first applied to the testator's estate when he died in 1935; and that before 1935, Section 804 had given a *new* meaning to the statute. In other words, the Circuit Court of Appeals in effect said that although the transfer was made and executed in the year 1929, the definition of "consideration" applicable thereto, might be changed from time to time, and that the particular definition which happened to be in force at the time of death, was the one which should govern, rather than the definition which was in effect at the time the transfer was made. If the ruling of the Circuit Court of Appeals is upheld, then a non-taxable transfer may readily be turned into a taxable transfer by retroactive legislation. The only attempt to define "consideration" in Section 302(d) (as it stood in 1929) was the provision that it must be "an adequate and full consideration in money or money's worth". It would be unreasonable thus to reach back by a restrictive "definitory amendment" in 1932.

In the leading case of *Lewellyn* v. *Frick*, 268 U. S. 238, 251, 252, this Court laid down the general rule that doubts as to constitutionality are avoided by construing a statute as referring only to transactions taking place after it was passed; and in that case this Court approved that general principle "when to disregard it would be to impose an unexpected liability, that if known might have induced those concerned to avoid it and to use their money in other ways".

So we urge that Congress, having given the 1929 transfer a non-testamentary character, could not lawfully in 1932, reach back to make it testamentary in character and to make it a taxable event. Once the property was so transferred upon an adequate and full consideration, it was removed from the scope of the Estate Tax law, and it would be unreasonable to include it in the decedent's gross estate for tax purposes, by the enactment of *subsequent* restrictive legislation. Any such legislation in 1932 would arbitrarily ignore recognized rights to enjoy and transfer property and would be violative of the Fifth Amendment. Any retroactive operation of a statute, the effect of which is to tax a past bona fide transfer, not testamentary in character, is "so arbitrary and capricious as to amount to confiscation and offend the Fifth Amendment". *Nichols* v. *Coolidge*, 274 U. S. 531, 542. See also, *Coolidge* v. *Long*, 282 U. S. 582; *Helvering* v. *Helmholz*, 296 U. S. 93, 98; *White* v. *Poor*, 296 U. S. 98, 101, 102; *Helvering* v. *City Bank Co.*, 296 U. S. 85, 89; *Hassett* v. *Welch*, 303 U. S. 303.

POINT II.

Congress did not intend the Amendment, Section 804 of the Revenue Act of 1932 (restricting consideration for a transfer) to have retroactive effect upon a transfer made in 1929.

There is nothing in the wording of the amendment, indicating that Congress intended that it should have retroactive application. On the other hand, the Revenue Act of 1932 referred to the amendment as "a new sentence" to be added to the Revenue Law (see Appendix, *infra*). The new sentence is to the effect that the relinquishment "shall not be considered" to any extent, a consideration in money or

money's worth. This language, adopting the future tense, clearly indicated prospective application. If Congress had intended any retroactive application, it would have so stated, or it might have used the words "is not to be considered". Congress was here dealing with *contractual rights,* that is, consideration for valid executed transfers; in 1932 it could not have intended to limit the scope of "consideration" as theretofore relied upon in a 1929 contract.

The decision of this Court in the case of *Hassett* v. *Welch,* 303 U. S. 303, is significant. Section 302(c) of the Revenue Act of 1926 as amended, taxed certain transfers, made "at any time". This Court held that said expression "at any time" would not embrace transfers, consummated before the passage of the statute. In the light of this ruling, certainly in the case at bar where there was no "time" provision of any kind found in Section 804, said latter amendment must be construed to have no retroactive effect.

Rules of Construction.

There are several applicable rules of construction.

1. Statutes must be construed prospectively, and if there is to be retroactive operation, or change of status, the declaration of retroactivity must be "clear, strong and imperative". See, *Shwab* v. *Doyle,* 258 U. S. 529, 534; *Blodgett* v. *Holden,* 275 U. S. 142, 149; *United States* v. *Magnolia Co.,* 276 U. S. 160, 162; *Hassett* v. *Welch,* 303 U. S. 303, 314; *Jacobus* v. *Colgate,* 217 N. Y. 235, 240.

2. Statutes are not to be considered as applying to cases which arose before their enactment. To disregard this rule "would be to impose an unexpected liability, that

if known might have induced those concerned to avoid it and to use their money in other ways". See, *Lewellyn* v. *Frick,* 268 U. S. 238, 252; *Haggar Co.* v. *Helvering,* 308 U. S. 389, 400.

3. An Estate Tax, being a special tax, must be construed strictly against the Government, and in favor of the taxpayer. In the leading case of *Gould* v. *Gould,* 245 U. S. 151, it was held at page 153:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen."

4. If there is any ambiguity, it should be resolved in favor of the taxpayer. *Hassett* v. *Welch,* 303 U. S. 303, 314; *Corporation of America* v. *McLaughlin,* 100 F. (2d) 72; *Cloister* v. *United States,* 100 F. (2d) 355.

5. Tax cases are governed "by equitable principles." *Stone* v. *White,* 301 U. S. 532; *Helvering* v. *Lazarus,* 308 U. S. 252, 255.

House Committee Report.

The House Committee Report No. 708 (see Appendix, *infra*) referred to Section 804 as an *amendment of Section 302(d).* (The Finance Committee Report No. 665 of the Senate was similar in form.) There was no suggestion in the Report that the statute was intended to have retroactive effect. As the statute was designated an "amendment", the Committee must have intended to make some change in the form of Section 302(d); and it follows that

the Committee must have intended that the amendment should apply only to future contracts, resting upon such relinquishment of property rights. It is to be noted that the Committee Report used the word "excludes" and stated that *prior to 1932,* relinquishment of dower had constituted "a consideration for an otherwise taxable transfer". The plain inference is that *after 1932,* the relinquishment of such property rights would no longer serve as "a consideration for an otherwise taxable transfer." In other words, after 1932, a waiver of such rights would no longer be an adequate and full consideration in money's worth.

Other portions of the Revenue Act were amended at the same time, by Sections 803 and 805 of the Revenue Act of 1932. A study of the language used and the explanation given in the Committee Report (see Appendix, *infra*) with respect to these Sections 803, 804 and 805, is highly significant and indicates that as to Sections 803 and 805, the new legislation was intended to *clarify* the existing law. However, as to Section 804, there is no suggestion that it was intended *to be retroactive or to clarify* the existing law.

(a) The Committee Report, in dealing with the preceding Section 803 of the Revenue Act of 1932 (amending Section 302(c) of the Revenue Act of 1926 as to future estates), specifically stated that the purpose of the amendment was "to clarify" the existing law, and then went on to say—"This is a clarifying change and does not represent new matter."

(b) The Report, in dealing with the succeeding Section 805 (amending the existing law as to deductions), specifically stated "This amendment, with one exception, merely clarifies the existing law * * *. The principal changes made are * * * (4) A clarifying provision limiting the re-

quirement of an adequate and full consideration in money or money's worth to liabilities founded on contract."

If the Committee had any thought or intent of enacting the intervening Section 804 as a retroactive statute or as clarifying the existing law, the Report would have noted this fact, just as it did in connection with Sections 803 and 805. The House Committee Report, dealing with Section 804, refers to the relinquishment of dower "or other marital rights in decedent's property"; and then cites an example of a wife who was entitled to one-third of her husband's estate "of which she cannot be deprived by Will without her consent." Clearly, Congress intended to limit Section 804 to the wife's property rights which come into effect upon her husband's death.

The expression of intention by Congressional Committees may be resorted to, in construing the statutes to which they relate. See, *Humphrey's Executor* v. *United States*, 295 U. S. 602, 624; *United States* v. *Great Northern Railway Co.*, 287 U. S. 144, 154.

The question here is, —what did Congress intend? We urge that Section 804 of the Revenue Act of 1932 was an amendment, effecting a change in existing tax law, and that Congress did not intend that it should have retroactive operation upon a non-taxable transfer, made in 1929.

POINT III.

The consideration for the trust transfer was not a relinquishment by the wife of any dower or other marital rights in the decedent's property or estate, within the meaning of Section 804 of the Revenue Act of 1932.

When the parties made the Separation Agreement and also agreed upon the amount and form of the trust transfer on January 31, 1929 (R. 91, 92), the husband was legally obligated to support the wife and child, which continuing obligation or duty would cease upon his death. *Wilson* v. *Hinman,* 182 N. Y. 408. In *Barnes* v. *Klug,* 129 App. Div. 192, 195, it was held that "This duty (marital duty of support) being upon him only during his life time, the courts cannot compel him to make provision for its continuance after his death." He was seeking some way to fix and to compromise and discharge that continuing obligation. As a result of their negotiations, the wife agreed to accept (1) $2,500 a month for her own support and for her assumption of the child's support, or (2) the establishment of a trust fund in the sum of $425,000 with income payable to her for the same purposes. The husband could exercise either option. By agreement, he might have paid his wife a lump sum of money to discharge that obligation. The husband, by the trust transfer, compromised and discharged his obligation to his wife, just as he might have compromised and discharged any other obligation during his life. Such consideration was not the "relinquishment" of any marital right in the decedent's property or estate.

Section 804 refers to dower or "statutory estate created in lieu of dower or curtesy, or of other marital rights in

the decedent's property or estate." Upon the familiar principle of construction of *ejusdem generis,* these terms refer to *property* rights which come into being because of and upon a husband's death. On the other hand, the right to support was a marital right or duty (arising out of the marriage relationship), which continued only during the husband's lifetime. As the Board of Tax Appeals very pointedly said, the right of the wife and child to support "was a right which would cease at his death" (R. 74). Clearly it was not a property right or a statutory estate, like dower, which came into effect upon his death, and it was not a right in decedent's property or estate. At most it was a personal right against the husband *while he was alive.*

It is also to be noted that Section 804 expressly used the words "in decedent's property or estate". The use of these words indicated that Congress intended to include only *property* rights which come into existence at *death* and not a personal claim for support during decedent's life, which claim *terminates* upon the husband's death.

Section 302(b) of the Revenue Act of 1926 had included dower and any statutory substitutes, in the gross estate (because the generating source of their creation, is the decedent's death). So Section 804 of the Revenue Act of 1932 was aimed at the relinquishment of similar property rights, arising upon a husband's death. It provided that the relinquishment of these rights, should not serve as consideration for an *inter vivos* transfer. A husband and wife could not thus provide an escape from Federal Estate Tax.

Moreover, before the trust was established on June 12, 1929, the wife had procured a Nevada divorce decree whereunder the financial obligation of the husband (fixed

by the Separation Agreement) became further fixed by a Judgment of Court; and the Court approved the establishment of the trust in settlement of that obligation. So far as the wife was concerned, the establishment of the trust was a complete compromise and settlement of his financial obligation to her, fixed by the divorce Decree. *Sweeney* v. *Sweeney,* 42 Nev. 431; *Helvering* v. *Fuller,* 60 Sup. Ct. Rep. 784. Certainly the discharge from such judicial obligation was not a relinquishment by the wife of any dower right or of any statutory estate or of any other marital right in decedent's property or estate.

In 1929 the husband, by Will effective upon his subsequent death, could have lawfully disposed of all of his property (except wife's dower) to the exclusion of the wife and child. *Newman* v. *Dore,* 275 N. Y. 371; Stipulation, R. 94. In the Separation Agreement the wife released dower rights in real property, valued at $20,591.85 (R. 93, 94). However, this was an insignificant amount, compared to the entire amount involved and the provision was a normal one in a separation agreement. In any event, the real consideration for the trust transfer was and is to be measured by the discharge of the husband's obligation to support his wife and her assumption of the support of the child. She accepted the trust income in full satisfaction and discharge of the obligation. As appears from the Separation Agreement (R. 28), the parties were primarily providing for "support and maintenance". With the exception of said inchoate right of dower, the wife had no rights in the decedent's property or estate to relinquish, and it has been so stipulated (R. 94). As was said by the Board of Tax Appeals, the discharge of the husband's obligation, upon a mathematical basis, was worth at least, $414,324.50 (the value of the securities transferred). This was the evidence of the money's worth of the consideration

for the trust transfer, and operated to exclude the whole trust property from the decedent's estate.

The decision of the Circuit Court of Appeals in the case at bar rested largely upon a decision made by the same Court several weeks earlier in the widely different case of *Meyer* v. *Helvering,* 110 F. (2d) 367. This was a so-called "deduction" case, and the Circuit Court of Appeals attempted to spell out some similarity between that case and the case at bar. We submit that there is no such similarity. Here the real point at issue is whether for purposes of estate taxation, said trust fund may be brought back and *included* in the decedent's gross estate. The so-called "deduction" cases provide no rule or principle to determine the *extent* of a decedent's gross estate. "Deductions are matters of legislative grace", dependent upon the law at the time of death, and they lay down no rule to determine what property should or should not be *included* in the gross estate. See *New Colonial Ice Co.* v. *Helvering,* 292 U. S. 435; *Woolford Realty Co.* v. *Rose,* 286 U. S. 319; *Empire Trust Co.* v. *Commissioner,* 94 F. (2d) 307.

The last named case is an excellent example where the Court declined to recognize as a deductible claim, the sum of $50,000 paid to the decedent's widow pursuant to an ante nuptial agreement, in lieu of dower. There is no constitutional right to be preserved in the case of deductions.

In the case at bar, we have no such question of deductions. The question here is whether an *inter vivos* trust fund, having once been excluded from the decedent's estate by virtue of Section 302(d) of the Revenue Act of 1926, may thereafter be subjected to Estate Tax by the application of Section 804 of the Revenue Act of 1932. Items of deduction must be determined according to the law at the time of a decedent's death. The inclusion or exclusion of

this trust property must be determined in accordance with the law at the time of the trust transfer.

The Circuit Court of Appeals dealt with the question of the exclusion of the trust fund, as though it were a claimed annuity deduction. The fact is, that there was no outstanding claim against the decedent by the wife at the time of his death, either by way of annuity payments, guarantee or otherwise. Her claim had been finally settled and compromised in 1929, by the trust transfer of property. The consideration for this transfer was the discharge of the husband's continuing obligation. This was not a relinquishment of a right in the deceased husband's property or estate. Her release of the personal right of support and her assumption of the child's support, were an adequate and full consideration in money's worth.

Conclusion.

For all the reasons advanced in this brief, a Writ of Certiorari should issue to review the Decision and Decree, as prayed for in the foregoing Petition.

Respectfully submitted,

HARRY J. AHLHEIM,
Counsel for Petitioners.

REEVES, TODD, ELY & BEATY,
Attorneys.